

AMENDED IN SENATE AUGUST 27, 2001

AMENDED IN SENATE AUGUST 20, 2001

AMENDED IN SENATE JULY 18, 2001

AMENDED IN SENATE JULY 5, 2001

AMENDED IN SENATE JUNE 13, 2001

AMENDED IN ASSEMBLY MAY 1, 2001

AMENDED IN ASSEMBLY APRIL 16, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 1453**

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**Introduced by Assembly Member Koretz**  
**(Principal coauthor: Assembly Member Vargas)**  
**(Coauthors: Assembly Members Chan and Jackson)**  
(Coauthors: Senators Kuehl and Romero)

February 23, 2001

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An act to add Sections 22963, 22964, and 22965 to the Business and Professions Code, relating to tobacco products.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1453, as amended, Koretz. Tobacco: display and use limitations.

Existing law provides for the establishment of programs relating to tobacco use prevention.

This bill would prohibit any person, firm, or corporation from displaying or making available any ashtrays or other receptacles

designed for tobacco-related waste for use on the premises where smoking is prohibited with specified exceptions, and would impose either a civil penalty or subject the person, firm, or corporation to a citation for an infraction with escalating fines for subsequent violations. By creating new infractions, the bill would impose additional duties on local law enforcement agencies, thus creating a state-mandated local program.

This bill would also prohibit the distribution of free samples of tobacco products by mail to anyone who has not been previously identified as a consumer of tobacco products who is 18 years of age or older and would ~~impose~~ *authorize the imposition of a civil penalties* ~~penalty~~ for each violation of this provision.

This bill would require any person, firm, or corporation that maintains an area where smoking is permitted under state law to provide one or more receptacles for tobacco-related waste for use on the premises.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 22963 is added to the Business and
- 2 Professions Code, to read:
- 3 22963. (a) Except as provided in subdivisions (b) and (c), no
- 4 person, firm, or corporation shall display or make available
- 5 ashtrays or other receptacles designed for tobacco-related waste
- 6 for use on the premises where smoking is prohibited under existing
- 7 state law.
- 8 (b) Notwithstanding subdivision (a), a receptacle for
- 9 tobacco-related waste may be placed within five feet of a door
- 10 available for public entry onto the premises.
- 11 (c) Any person, firm, or corporation that maintains an area
- 12 where smoking is permitted under state law, such as an outdoor



dining area, shall provide one or more receptacles for tobacco-related waste for use on the premises.

(d) Notwithstanding subdivision (a), ashtrays may be sold or distributed to the public on premises where smoking is prohibited but only for use in areas where smoking is not prohibited.

(e) Any person, firm, or corporation who is in violation of subdivision (a) shall be subject to either of the following:

(1) A civil penalty assessed by the State Department of Health Services for each violation according to the following schedule:

(A) A civil penalty of two hundred fifty dollars (\$250) for the first violation.

(B) A civil penalty of five hundred dollars (\$500) for the second violation at the same location within a five-year period.

(C) A civil penalty of one thousand dollars (\$1,000) for the third or subsequent violation at the same location within a five-year period.

(2) A citation by local police, sheriff, or code enforcement personnel for committing a public offense punishable as an infraction by a fine subject to the following schedule:

(A) For a first offense, punishable by a fine of two hundred fifty dollars (\$250).

(B) For a second offense at the same location within a five-year period, punishable by a fine of five hundred dollars (\$500).

(C) For a third or subsequent offense at the same location within a five-year period, punishable by a fine of one thousand dollars (\$1,000).

SEC. 2. Section 22964 is added to the Business and Professions Code, to read:

22964. (a) No person, firm, or corporation shall provide free samples of any tobacco product by mail to anyone who has not been previously identified as a consumer of tobacco products who is 18 years of age or older.

(b) Each mailing of a tobacco product to any person who has not been previously identified as a consumer of tobacco products who is 18 years of age or older shall constitute a separate violation of subdivision (a) and shall be subject to the civil penalty as provided in subdivision (c).

~~(c) The State Department of Health Services shall assess a civil penalty~~

1     (c) *In addition to any penalty that may be imposed for a*  
2 *violation under Section 308b of the Penal Code, a person, firm, or*  
3 *corporation shall be subject to a civil penalty assessed by the State*  
4 *Department of Health Services of two hundred fifty dollars (\$250)*  
5 *for each separate violation of subdivision (a).*

6     SEC. 3. Section 22965 is added to the Business and  
7 Professions Code, to read:

8     22965. (a) Sections 22963 and 22964 shall not preempt or  
9 otherwise prohibit the adoption of a local standard that imposes  
10 greater restrictions on the promotion of, use or access to tobacco  
11 products than the restrictions imposed by this division.

12     (b) To the extent that there is an inconsistency between  
13 Sections 22963 and 22964 and a local standard that imposes  
14 greater restrictions on the promotion of, use of, or access to,  
15 tobacco products, the greater restriction on the promotion of, use  
16 of, or access to, tobacco products in the local standard shall prevail.

17     SEC. 4. No reimbursement is required by this act pursuant to  
18 Section 6 of Article XIII B of the California Constitution because  
19 the only costs that may be incurred by a local agency or school  
20 district will be incurred because this act creates a new crime or  
21 infraction, eliminates a crime or infraction, or changes the penalty  
22 for a crime or infraction, within the meaning of Section 17556 of  
23 the Government Code, or changes the definition of a crime within  
24 the meaning of Section 6 of Article XIII B of the California  
25 Constitution.

